

BAIL SLIP

Ismail Beebi The Appellant/Accused released on bail on bail by orders of his court dated 9.7.1999 and made in crl.MP.No.3761/99 in Crl.A.No.385/99

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.07.2005

CORAM

THE HONOURABLE MR. JUSTICE N.DHINAKAR

AND

THE HONOURABLE MR. JUSTICE M.CHOCKALINGAM

CRL. APPEAL NO. 385 OF 1999

Mrs. Ismail Beebi ..Appellant/Accused

- Vs -

State rep. by
Inspector of Police
Vellakoil Police Station.
(Crime No.447/97)

..Respondent/Complainant

Appeal preferred against the conviction and sentence passed by the learned Principal Sessions Judge, Erode, made in S.C. No. 208 of 1998 dated 25.2.99 as stated therein.

For Appellant : Mr. Saravanakumar

For Respondent : Mr. S.Jayakumar, APP

JUDGMENT

The sole accused in a case of murder on being found guilty as per the charge and awarded life imprisonment by the Court of Sessions, Erode, in S.C. No.208 of 1998 has preferred the present appeal.

2. The short facts necessary for the disposal of this appeal could be stated thus :-

P.W.1 is a resident of Vellakoil Kacherivalasu. The appellant also belongs to the same village. The appellant was having two children, one aged about four years and the other aged about four months. She was deserted by her husband who went over to Madurai. On the date of occurrence, namely, on 20.9.97, at about 7.00 p.m., when P.W.1 was returning from the temple after attending nature's call, she found the appellant going near the well having one child over her shoulder and taking the other child by her hand. The appellant on nearing the well threw the four months old baby child into the well. This was witnessed by P.W.1. When the appellant attempted to throw the other child also, P.W.1 stopped her and when she shouted for help, P.W.s 2, 3 and 4 came over there. The appellant was caught and she was asked to wait aside with the other child. Immediately P.W.1 rushed to Vellakoil police station at about 10.00 p.m. where P.W.11 was on duty at that time. She gave an oral complaint to P.W.11, which was reduced into writing and which stands marked as Ex.P-1. On the strength of the complaint, Ex.P-1, a case came to be registered against the appellant in crime No.447/98 under Section 302 IPC. Printed first information report, Ex.P-5 was despatched to court.

3. On receipt of a copy of the printed first information report, P.W.12, the Inspector of Police, Vellakoil, took up investigation in the crime. He proceeded to the scene of occurrence, made an inspection in the presence of two witnesses and prepared Ex.P-2, observation mahazar and drew a rough sketch, Ex.P-6. He conducted inquest over the dead body of the deceased child in the presence of witnesses and panchayatadars and prepared Ex.P-7, inquest report. He sent the dead body of the child alongwith a requisition to the doctor for conducting autopsy.

4. On receipt of the requisition, P.W.9, the Assistant Surgeon attached to the Government Hospital, Kangeyam, conducted autopsy on the dead body of the deceased child. The doctor issued Ex.P-4, the post-mortem certificate opining that the deceased would appear to have died of drowning about 30 to 38 hours prior to autopsy.

5. P.W.12, in the meantime, continuing with investigation arrested the accused and she was sent to court for remand. On completion of the investigation, the investigating officer filed the final report against the accused and the case was committed to the court of sessions, necessary charge was framed and the accused was tried by the court of sessions.

6. In order to substantiate the charge levelled against the appellant, the prosecution marched twelve witnesses and relied on seven exhibits. No material objects were marked. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances found in the evidence of the prosecution witnesses. The accused denied them flatly as false. No defence witness was examined nor any documents were marked. After hearing the submissions made by both sides and on scrutiny of the materials, the trial court found the appellant guilty as per the charge and awarded life imprisonment. Hence, this appeal by the appellant against the said conviction and sentence.

7. Learned counsel appearing for the appellant inter alia made the following submissions. In the instant case, though number of witnesses have been marched by the prosecution as witnesses, P.W.1 was the only witness examined to speak about the occurrence. According to P.W.1, she witnessed the appellant throwing the child into the well. When her evidence is viewed it could be seen that it is a falsity and it is improbable and, therefore, the lower court should have rejected the testimony outright. Apart from that, the daughter of P.W.1 had illicit intimacy with the husband of the appellant and, therefore, the appellant was having a quarrel over the same with P.W.1 at the time of occurrence and during that quarrel, accidentally the child fell into the well and, therefore, it was not the act of the accused and in the circumstances P.W.1 had come out with false evidence implicating the appellant with the crime in order to see that the appellant is put in custody. The lower court, in such circumstances, should not have believed the evidence of P.W.1. Apart from that, the occurrence had taken place at about 7.00 p.m. and there was no possibility of P.W.1 seeing the occurrence as it was night hours. That apart, the other attendant circumstances as brought forth by the prosecution before the trial court would falsify the evidence of P.W.1 and in the circumstances the appellant is entitled for the benefit of doubt and, hence, she is entitled for an acquittal.

8. The Court heard the learned Addl. Public Prosecutor appearing for the State on the above contentions and also perused the recorded evidence, both oral and documentary.

9. It is not in controversy that the four months old child of the appellant died due to drowning. This fact has been substantiated by the prosecution through the evidence of the doctor P.W.9 through whom the post-mortem certificate, Ex.P-4 was also marked. The appellant has not disputed the cause of death of the child either before the court below or before this Court. On the medical evidence we hold that the child died on account of drowning.

10. The gist of the case of the prosecution as could be seen from the available materials is that it was the appellant

who threw the child into the well and the same was witnessed by P.W.1. From the evidence of P.W.s 2 to 5 it would be clear that they came to the place of occurrence only after P.W.1 raised a cry and thus the only eye witness available for the prosecution is P.W.1. According to P.W.1, when she was coming from the temple after attending nature's call she found the accused going nearby the well with two children and suddenly she threw the four months old child into the well. It is her further evidence that when the appellant attempted to throw the other child also, she was stopped by P.W.1 and on hearing the cries of P.W.1, the other witnesses came to the scene. It is pertinent to point out that P.W.1 is an utter stranger to the appellant. What was all contended before the court below and equally here also is that the daughter of P.W.1 had illicit intimacy with the husband of the appellant and in the circumstances she has given false evidence in order to send the appellant to custody. This contention has been rejected by the trial court and rightly too. In the absence of any material the said contention advanced by the appellant cannot be countenanced. This Court is unable to notice any reason or circumstance to disbelieve the evidence of P.W.1. Apart from that the evidence of P.W.1 has inspired the confidence of the Court and, hence, this Court accepts the evidence of P.W.1.

11. On going through the evidence adduced by the prosecution, this Court does not see any reason to take a different view from the one taken by the trial court and this Court has to necessarily find the appellant guilty and the conviction and sentence imposed on the appellant by the trial court are confirmed. In the result, this appeal fails and the same is dismissed. It is reported that the appellant is on bail. The Sessions Judge shall take steps to secure the appellant and commit her to prison to undergo the remaining portion of sentence imposed upon her.

12. Learned counsel for the appellant submits that a perusal of the evidence adduced by the prosecution would clearly show that the appellant was deserted by her husband, who went over to Madurai leaving herself and the two children. As she could not maintain herself, the poverty stricken lady, due to circumstances, has thrown the four months old child into the well. The learned counsel persuasively submits that this Court may consider recommending the case of the appellant on sympathetic grounds to His Excellency The Governor for remission of sentence.

13. This Court taking the facts in this case feels that this is a fit case for considering remission of sentence by His Excellency The Governor of Tamil Nadu under Article 161 of The Constitution of India. We have already noted that the appellant woman has lost her four months old child on account of mental strain due to the desertion by her husband and that she has another child, who has to be taken care of. We therefore, on consideration of the case of the appellant, recommend to His

Excellency The Governor of Tamil Nadu for remission of her sentence.

GLN

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Principal Sessions Judge, Erode.
2. The District Collector, Erode District.
3. The Director General of Police, Chennai.
4. The Public Prosecutor, High Court, Madras.
5. The Superintendent, Special Prison for Women, Vellore-2.
6. The Inspector of Police, Vellakoil Police Station, Erode District.
7. His Excellency the Governor of Tamil Nadu, Raj Bhavan, Guindy, Chennai 32 (with a covering letter).
8. The Secretary to Government, Home Department, Fort St.George, Chennai-9.
9. The Judicial Magistrate, Kangeyam.
10. -do- Through The Chief Judicial Magistrate, Erode.

SGR(C.O)
BG/28.07.2005.

WEB COPY

CRL. A. NO. 385 OF 1999